

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

| | | |
|--|---|--------------|
| <hr/> |) | |
| Investigation by the Department of Telecommunications |) | |
| and Energy on its own Motion into the Appropriate Pricing, |) | |
| based upon Total Element Long-Run Incremental Costs, |) | D.T.E. 01-20 |
| for Unbundled Network Elements and Combinations of |) | |
| Unbundled Network Elements, and the Appropriate Avoided |) | |
| Cost Discount for Verizon New England, Inc. |) | |
| d/b/a Verizon Massachusetts' Resale Services in the |) | |
| Commonwealth of Massachusetts |) | |
| <hr/> |) | |

RESPONSE OF VERIZON MASSACHUSETTS
TO CONVERSANT MOTION FOR RECONSIDERATION

Verizon Massachusetts (“Verizon MA”) replies to the Motion for Reconsideration (the “Motion”) filed by Conversant Communications of Massachusetts, LLC (“Conversant”) regarding the Department’s approval of Verizon MA’s compliance filing of July 16, 2003, in the above-referenced matter. For the reasons described below, the Motion should be denied because it does not meet the Department’s standard for reconsideration and is based on a misreading of the Department’s previous orders in this proceeding. The Department should find that Verizon MA has complied with its orders and ratify its approval of Verizon MA’s compliance filing.

Conversant’s Motion is limited to the issue of whether Verizon MA’s compliance filing appropriately charges for “hot cuts”, *i.e.*, “the loop provisioning conversion from one LEC to another.” July 11, 2002 Order, at 487. Conversant argues that Verizon MA fails to comply with the Department’s orders because: (1) Verizon MA removed references to the two hot-cut options in its compliance tariffs; (2) it indicated that it would charge the Non-Recurring charges

(“NRCs”) that apply to new loops for CLEC hot cuts; and (3) it failed to include descriptions of an optional hot-cut process in the tariff, with the proviso that those options would not be effective until the Department approves an alternative hot-cut process (Conversent Motion at 4-5). Conversent’s arguments are without merit.¹

With respect to the tariff language, Verizon MA eliminated all references to separate hot-cut NRCs or processes specifically to comply with the Department’s rulings and to avoid confusion by including tariff language that will not become effective until the Department completes its review of the alternative hot-cut process. The Department stated in its July 14, 2003 Order that Verizon MA “could not implement and charge for its alternative hot-cut process until the Department completed a thorough investigation of the WPTS process and its costs.” July 14, 2003 Order, at 7. Accordingly, it would be inappropriate to include language in a tariff for charges that cannot be applied.²

On the more substantive issue of what NRCs should be charged for hot cuts until the Department concludes its review and approval of an alternative hot-cut process and rates, Verizon MA’s July 16 compliance filing does not implement the new hot-cut NRCs approved by the Department, but applies the Department-approved non-recurring charges for new loops. This is fully consistent with Verizon MA’s previous application for NRCs for loops and the Department’s directives in this proceeding.

¹ Although Conversent correctly cites the Department’s standards with regard to consideration of motions for reconsideration and clarification, Conversent never applies the standards in arguing for its Motion. In fact, there is no assertion or showing of the existence of the type of “extraordinary circumstances” that could justify reconsideration by the Department. Accordingly, the Department should deny the Motion. Nonetheless, Verizon MA will address Conversent’s arguments.

² The Department stated that it will be reviewing the terms and costs of service. Until then, there are no approved service descriptions or charges that can be included in an otherwise effective tariff. *See, e.g.*, February 12, 2003 Order on Clarification, in which the Department ordered Verizon MA to submit a tariff for the alternative hot-cut process in the form of “illustrative pages without an effective date.” February 12, 2003 Order, at 2.

Under the superceded tariff, there were no separate NRCs for hot-cuts. As the Department stated in its July 11, 2002 Order, Verizon MA “charges an identical rate for hot-cut orders...and for new initial UNE loops...”. July 11, 2002 Order, at 491. The Department described Verizon MA’s hot-cut proposal in this case as a “deaverag[ing of] hot cut and new initial orders...”. *Id.*, at 492. However, in this case, the Department approved new and different NRCs for new loops and hot-cut loops provisioned through the manual hot-cut process, and ordered Verizon MA to propose an additional, less costly, alternative hot-cut process. *Id.*, at 492-500. Subsequently, the Department determined that the approved NRCs for the manual hot-cut process could not go into effect until the NRCs for the alternative hot-cut process are also approved by the Department. July 14, 2003 Order, at 7. In compliance with these orders, the July 16 filing eliminates references to separate hot-cut NRCs, and indicates that Verizon MA will continue to apply the Department-approved NRCs for new loops. July 16 Compliance Filing Cover Letter, at 1. This complies with the Department’s requirements by deferring implementation of separate NRCs for hot cuts and continuing to charge the otherwise applicable NRCs for new loops.

There is no merit to the suggestion that the old NRCs for loops should continue to be applied to hot cuts. First, those NRCs are based on cost studies that have been superceded and replaced by NRCs approved by the Department in this proceeding. The Department’s Orders never indicated that these old costs should continue to be applied; in fact, rates approved in compliance with the Department’s orders in this case are to be effective as of August 5, 2002. July 11, 2002 Order, at 517. It is only “the new rates for its manual hot-cut process” that are to be delayed pending approval of the alternative process. July 14, 2003 Order at 7.³ There is no

³ The recently approved NRCs for new loops are not the separate, new hot-cut rates that were approved by the Department.

suggestion in any Department order that Verizon MA should revert back to its now-superseded NRCs, when it continues to charge “new loop” NRCs to hot cuts.

In short, Verizon MA will charge for hot cuts under the new tariff in precisely the same manner and under the same terms as it did under the superseded tariff, *i.e.*, a hot-cut loop is charged the NRCs applicable to a new loop at rates which the Department has set for new loops. Contrary to Conversent’s suggestion, there is no “old” hot-cut rate in the superseded tariff that can be charged. Verizon MA’s position is reasonable and squarely within the letter and spirit of the Department’s orders. In contrast, Conversent’s effort to have the superseded loop NRCs apply is a transparent attempt to continue receiving hot-cut loops at rates below what the Department found were Verizon MA’s costs of providing either new or hot-cut loops.⁴ Its position is neither fair, reasonable, nor one that the Department can accept.

Moreover, as indicated in Verizon MA’s July 16 compliance filing, Verizon MA’s billing system could not bill hot cuts under the old structure because of changes in the NRC rate structure approved by the Department in this case. Conversent seems confused about the rate structure changes approved by the Department in this proceeding (Conversent Motion, at 5-6). The old rate structure for the NRCs applicable for loops (including hot cuts) had different rates depending on how many links were included in a single order. This three-block rate structure has different rates for: (1) the first link; (2) the second through ninth links; and (3) ten or more links. In addition, different rates exist for analog and digital links. *See* DTE MA No. 17, Part M, Section 1.3.1 The new NRCs make no distinction between analog and digital links and have a

⁴ Conversent asserts that the Department “certainly did not authorize Verizon to bill new rates retroactively” (Conversent Motion at 4). Here too, Conversent is wrong. Under the Department’s Order of July 30, 2002, all rates are retroactive to August 5, 2002, except for the separate manual hot-cut rates. That rate is not being applied given the Department’s later rulings. Since hot-cut loops are billed the NRCs applicable to new loops under both the superseded and the new tariffs, those rates are subject to retroactive adjustment. This is perfectly consistent with the Department’s directives.

two-block rate structure with different rates for: (1) the first link in an order; and (2) all subsequent links in an order. Verizon's billing system has been changed to accommodate the new rate structure for NRCs, and it will not be possible to bill under the old, three-block rate structure without significant additional changes to the billing system.⁵

Accordingly, Conversent's Motion does not meet the Department's standard for reconsideration and completely misapplies the Department's rulings. Verizon MA's July 16 Compliance Filing properly implements the Department's orders in this proceeding. The Department should, therefore, deny Conversent's Motion for Reconsideration.

Respectfully submitted,

VERIZON MASSACHUSETTS

Bruce P. Beausejour
Verizon Massachusetts
185 Franklin Street, 13th Floor
Boston, Massachusetts 02110-1585
(617) 743-2445

Robert N. Werlin
Keegan, Werlin & Pabian, LLP
21 Custom House Street
Boston, Massachusetts 02110
(617) 951-1400

Dated: July 24, 2003

⁵ It would take several months to make the additional changes to the billing system to bill under both rate structures and require Verizon MA to incur potentially significant additional design and programming costs.